Supreme Court, U.S.
FILED

97-64 JUN 2 1997

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MANH TRAN,

Petitioner,

v.

WAYNE STATE UNIVERSITY AND ITS EMPLOYEES,
HARPER HOSPITAL AND ITS EMPLOYEES,
J.H. ISAACSON,
RESPONDENTS' EMPLOYERS AND FUNDING
ORGANIZATIONS AND DEGREE-GRANTING
INSTITUTIONS
In their official and individual
capacities,

Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Manh Tran, Pro se
80 E. Hancock #702
Detroit, MI 48201-1328
(313) 832-2046

July 5, 1997

77 pp

QUESTIONS PRESENTED

1. Public universities like Wayne State University and University of Michigan are not owned by the respondents. Whether the Board of Governors and Regents owe an honor, duty, country to the people of the United States to revoke the wrongfully granted degrees.

2. Whether fraud, deceit, errors and postgraduate conducts that brought shame, disgrace to the degree-granting institutions like thefts, lying, invasion of women's privacy, gang rape, discrimination and harassment, Saddam's thugs and dirty communists and Klu Klux Klan are ground for rescission of degrees.

3. The Board of Governors and Regents are elected by the people of Michigan based on campaign promises. Whether breach of contracts and fiduciary duties are ground for court intervention.

4. Whether the will of the people as stated in the Fourteenth Amendment and its subsequent legislative products like Section 1983, 1985, Titles VI, VII, IX, Michigan's Elliott-Larsen Civil Rights Act override the discretion granted to universities.

5. Whether breach of contracts and fiduciary duties to the public, violations of constitutional and statutory and legislative provisions mentioned in the appropriate sections are ground for termination of all fundings from the government. In this case, the involved

US government departments are the Department of Health and Human Services and its division the National Institute of Health, the Department of Education and Housing and Urban Development.

6. Whether in case of breach of fiduciary duties by elected school officials, Court has the constitutional duty to protect the people by revoking the wronfully granted degrees and terminating all fundings from the people to the respondents. The damages suffered by the people in the hands of graduates of Wayne State University and University of Michigan are equivalent to bombs exploding all over the nation, destroying society. Therefore, the Court has the constitutional duty to

subpoena all the records as mentioned in this petition and take actions as stated in the demands for judgment.

7. Congress authorized monetary damages against state institutions for violations of Section 1983, 1985, Titles VI, VII, IX and whether the legislative actions override the Eleventh Amendment.

8. Due to the lack of intellect and interests of lower courts and the magnitude of damages inflicted on the American people, The Supreme Court has the constitutional duty to consider all the questions presented even though they were not explicitly raised in the lower courts.

9. Whether the laws broken by the defendants,

from antitrusts, fraud, thefts, cover-ups, obstruction of justice, breach of contracts, fiduciary duties, discrimination and harassment, terrorism, genocidal racism are ground for the US government to send in five divisions of Marines and airborne divisions and columns of tanks to capture the traitors and try them by a special military tribunal, Nuremberg-type trial, and put behind bars for medical crimes against humanity.

10. Whether breach of fiduciary duties by the board of Governors and Regents by having two jobs are ground for dismissal from their positions.

11. Whether false promises to the voters by the Board of Governors and Regents are ground for dismissal by the Court.

12. Whether the will of the people override the discretion card. The discretion card that the respondents played and relied on by the lower courts to dismiss is used as a cover-up for the illegal, criminal activities, ethnic-cleansing as evidenced by the newspaper articles about the respondents' conducts. Discretion argument are of thieves and thugs.

13. The massive grade fraud on the Surgery exam, eg, 100 multiple choice questions are equivalent to only 20 multiple multiple choice questions, every imaginable raw scores acceptable to the department, the cut-off for Pass/Fail is based fraudulently and not on the constant one and a half standard of deviations from the mean that the

National Board of Medical Examiners used and on small sample size. This means that there are massive number of Fail grades that are practicing medicine, destroying the American people like real bombs. Whether the parties involved are fully responsible for the damages and ought to be tried by a jury for their criminal breaches of fiduciary duties.

14. Whether breach of contracts with the employers are ground for termination of employment and cut-off of all retirement benefits.

15. Whether the employers are liable for the conducts of their employees based on both the Civil Rights laws and breach of contracts theory for both compensatory and punitive damages.

16. Considering respondents' past conducts, whether an appropriate way to collect attorney's fees and costs might be to threaten to stick bank employees with HIV-infected blood.

17. Whether castration might be an appropriate solution to invasion of woman's privacy.

18. Whether treason against the will of the people, perjury to the US government and state legislature, embezzlement, corruption when receiving fundings as a teaching hospital, are ground for criminal prosecution by the Justice department and boycott of the graduates by the people across the nation.

19. Whether the MD degree, certified by DO qualities from sewer, garbage, trash

osteopathic school who were not qualified to get into medical school in the first place, is ground for rescission of massive number of degrees.

20. Public funds were used to train the respondents. Whether HIV invasive procedure dodgings are ground for rescission of degrees.

21. Whether the will of the people as expressed in the legislative laws like Titles VI, VII, IX, Michigan's Elliott-Larsen Civil Rights Act and the Fourteenth Amendment cover same sex harassment and in any work place environment.

22. Whether respondents are responsible for the conducts of medical school graduates of Wayne State University

and University of Michigan, ranging from buying the Surgery exam for $300, casualties, deaths in their own hands, HIV-dodging, incompetent to do any invasive procedures for HIV patients, just lip service, getting admission by having connections, and whether the US government should seek the maximum penalty for school officials since it would represent the will of the people, the conscience of the Nation, the hearts and minds of the people.

23. Whether the discretion card that the Court granted to school officials include free to rape, steal, lie, cheat, cover-up, obstruct justice, monopolize, embezzle, ethnic-cleanse, terrorize, invade women's privacy, own slaves as respondents seem to behave.

24. Whether the discretion card that the Court granted to school officials is in conflict with the funding organizations to respondents like the US Department of Health and Human Services and the private organizations who expect respondents to behave in a civilized, lawful manner.

25. Whether under the disguise of teaching hospitals to receive extra fundings from the US government, the Detroit Medical Center and its affiliated hospitals, pick and choose patients with private insurances while dumping non-insurance patients to students violated the Monopolies and Conspiracies Sections of the Sherman Act, Sec. 1,2, as amended, 15 U.S.C.A Sec. 1,2, Fraud, Embezzlement, Corruption, Perjury statutes.

26. What should be the just and appropriate penalty for school officials who signed the degrees and responsible for the massive damages by the graduates which far exceeded the Oaklahoma city bombing.
27. Whether the forceful response of a surgical attending staff at Harper Hospital after being threatened to be stuck with HIV-infected blood like "Sign off the case. Suggestion: Bullet to the head.", violated the American With Disabilities Act, Sec. 504 of the Rehabilitation Act of 1973, as amended.
28. Whether the typical conducts of WSU's medical school graduates like "Let him die" violated the Michigan ban on physician -assisted suicide.

PARTIES BELOW

The petitioner is Manh Tran.

The respondents are as follows:

1. Wayne State University and the responsible degrees granting officials, the Board of Governors and the President.

2. The Board of Regents and the President of University of Michigan for granting the medical degree to J.H. Isaacson.

3. The Board of Trustees of Kansas City College of Osteopathic Medicine for granting degree to J. Appel, DO quality.

4. Harper Hospital and its employees and the parent organization, The Detroit Medical Center and the affiliated cancer institute, Karmanos Cancer Institute and their Chairmen of the Board and Board of Trustees

5. Cleveland Clinic Foundation, the present employer of J.H. Isaacson and its Board of Trustees and Chairman of the Board.

6. The funding departments to respondents, the US Department of Health and Human Services and its division, the National institute of Health, the US Department of Education and Housing and Urban Development.

7. The degree-granting institutions of the respondents and their attorneys.

8. WSU's medical school graduates with grades and conducts as stated in the demands for judgment.

9. Wayne State University's employees are: Ms. Marilyn Williamson, Mr. Robert Sokol, Mr. Robert Frank, Mr. Waller, Mr. J. Rillema, Mr. Mark Ebell, Mr. David Fromm, Mr. J.H. Isaacson.

10. Harper Hospital's employees are: Mr. Paul Ragatzki, Mr. J. Appel, Mr. Kevin Callaghan, Ms. Andrea Fong.

11. All the respondents are in both their official and individual capacities.

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OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals is unreported. A petition for rehearing with suggestion for rehearing en banc was denied in an unreported order. The orders of the District Court are unreported.

JURISDICTION

The judgment of the Sixth Circuit Court of Appeals was entered on March 27, 1997. A timely petition for rehearing with suggestion for rehearing en banc was denied on May 9, 1997.

This Court has jurisdiction pursuant to 28 U.S.C. 1254(1) to review the judgment in question by writ of certiorari. The order of the district court from which an appeal was taken to the Court of Appeals was a final order.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment of the United States Constitution.
2. The fourteenth Amendment of the United States Constitution, Equal Protection under the laws.
3. Civil Rights and Conspiracy, 42 U.S.C.A Sec 1983, 1985.
4. Civil Rights, Title IX (Education Amendments of 1972, Sec. 901 et seq., 20 U.S.C.A Sec 1681 et seq.
   Title VI, Title VII of the Civil Rights Act of 1964, Sec. 701 et seq., as amended, 42 U.S.C.A Sec. 2000e et seq., Sec. 1981.
5. Eleventh Amendment of the United States Constitution.

6. M.C.L.A Const. Art 8, Sec. 5
   Rescission of degrees under Michigan law for fraud, deceit, error.
7. Fraud, fiduciary duty toward public, 18 U.S.C.A Sec. 1341
8. Treason, 18 U.S.C.A Sec 794
9. Perjury, 18 U.S.C.A Sec. 1621, 1623.
10. Obstruction of Justice, 18 U.S.C.A Sec 1503, 1505, 1001, 1513, 1514, 1515, 1512.
11. Embezzlement, 18 U.S.C.A Sec. 641, 666, 371 42 U.S.C.A Sec 1437.
12. Monopolies and conspiracies, Sherman Act, Sec. 1,2, as amended, 15 U.S.C.A Sec 1,2.
13. Thefts
14. Corruption

STATEMENT

Petitioner Manh Tran filed two lawsuits in US District Court against the named respondents. The lawsuits explicitly charged civil rights violation, breach of contracts among other charges, and mentioned explicitly fraud, deceit, errors in granting degrees by respondents. Petitioner thought that the District Court had the duty to protect the American people by taking the initiatives as stated in the Demands for Judgment.

A. The Decision Below

1. The District Court

The District Court relied almost exclusively on the fraudulent discretion that the respondents claimed to have and dismissed the cases without any consideration to the laws passed by Congress and signed by the

President. The will of the people, as represented by the laws passed by Congress, clearly override the discretion granted to school officials.

2. The Sixth Circuit Court of Appeals

The Demands for Judgment are explicitly stated for the Court of Appeals to take appropriate actions. Instead of issuing subpoena to the respondents to collect the fraudulent evidence, the Court of Appeals simply claimed that there is not enough evidence and affirmed the District Court decision.

REASONS FOR GRANTING THE WRIT

I. The massive fraud from Wayne State University and University of Michigan are equivalent to bombs exploding all over the Nation, destroying the fabric of society that the US Constitution and the founding fathers intended to preserve.

A. Demands for Judgment

Petitioner petitions the US Supreme Court to review the entire record and reverse with the following orders as a matter of law:

1. WSU to reinstate petitioner in his legal position as a medical student and graduate petitioner and WSU ought to follow the published Promotional Guidelines in promoting students equally.

2. Award maximum compensatory, punitive, and exemplary damages from the respondents in their individual capacities for intentional and discriminatory infliction of damages and emotional distress and from Harper Hospital since the employer is fully liable for its employees.

3. Order The Board of Regents of University

of Michigan to revoke Mr. J.H. Isaacson's degree for his conduct and for fraud, deceit, error since he had a medical degree and was not able to do any invasive procedure and had to consult Surgery to do for him. Practicing medicine like Mr. Isaacson is like a thief who steals others' works, including petitioner.

4. Order WSU Board of Governors to revoke the degrees from WSU graduates who cheated on the Surgery exams by buying the exams and therefore distorting the distribution curve and the cut-off point for Pass/Fail.

5. Order WSU Board of Governors to revoke the degrees from WSU graduates who did not do any invasive procedures on HIV patients except lip service and kept attacking petitioner who did all the

dangerous invasive procedures and those who obtain admission by having connections since this is fraudulent, deceitful and erroneous to grant a degree.

6. Order WSU Board of Governors to revoke the degrees from WSU graduates who were routinely given I → S grades, those who were allowed to retake the exams, those who scored lower than petitioner and with just multiple choice exam on the Surgery exam rather than multiple multiple choices that petitioner had to take, since according to respondents' attorney, that is a Fail grade.

7. Order WSU Board of Governors to revoke the degrees from WSU graduates who had patients died in their hands since this is real proof of fraud, deceit and error in granting the degrees in the first place.

8. Order the degree-granting institutions to revoke the degrees from the respondents as named in the parties section for their personal conducts and violations of the laws.

9. Order the Program Director of Family Medicine at the University of Michigan to review the quality of graduates like Mr. Mark Ebell. Practicing medicine the way he graded petitioner's exam, there would be a lot of dead bodies on the floor.

10. Order WSU Board of Governors to take disciplinary actions against WSU's employees for their breach of duties and conducts, including dismissal.

11. Order the American Association of Medical Colleges to revoke WSU's accreditation due to the mentioned violations.

12. Order the Department of Justice to prosecute the respondents.

13. Order the US Department of Health and Human Services and Education and Housing and Urban Development to cut-off all fundings to WSU and the Detroit Medical Center, particularly Harper Hospital, for violations of every imaginable Federal and State laws as mentioned in the jurisdiction part. The cut-off of all fundings should apply particularly to funding of training of Caribbean medical school graduates' thugs and unqualified DO quality and respondents.

B. Fraudulent Surgery Exam Scores

I. Multiple multiple choice questions:

1. Statement A

2. Statement B

3. Statement C

4. Statement D

5. Statement E

The correct answer is:

A. Both 1 and 3

B. Both 2 and 4

C. Only 4 is correct

D. All of the above are correct

E. None of the above are correct

II. Multiple choice questions:

1. Statement A

2. Statement B

3. Statement C

4. Statement D

5. Statement E

The correct answer is:

A. 1

B. 2

C. 3

D. 4

E. 5

Clearly one multiple multiple choice question is equivalent to five multiple choices question.

1. There are 2 scores reporting system for the Surgery exam:

a. Raw score: the no. of correct questions out of the total no. of questions.

b. Distribution curve score: How one's particular score is compared to the group taken the exam or over 4 years period. 500 is the mean with 100 points as one standard of deviation away from the mean. On national exam, one and a half standards of deviation away from the mean is used as the cut-off for Pass/

Fail. Therefore 350 or 345 for leniency. On national exam, the distribution curve score is taken together over 4 years with a large sample.

2. There is no constant cut-off using the distribution curve score from the Surgery department. The Surgery department is determined to fail a certain number of students. This is fraudulent to certify to the world the quality of WSU using the distribution curve score with a small sample.

3. The raw score varies widely from exam to exam, when it actually measures a person's knowledge. The department is willing to accept any raw score imaginable and had to rely on the distribution curve score to fail a certain number of students. This is the second fraudulent scheme.

4. One multiple multiple choice question is

equivalent to five multiple choice questions. When the exam had just multiple choice questions and the group is small, the distribution score is meaningless and the raw score weights only 1/5 of the multiple multiple choice question exam, the results are triply fraudulent.
5. There are students who paid $300 for a copy of the exam. The distribution curve therefore is distorted due to the skewed score. This adds another fraudulent factor to the Pass/Fail cut-off determination.

Therefore the recommendation from the department of Surgery to the Board of Governors to grant degrees has 4 fraudulent factors embedded in it.

Petitioner's Surgery exam score was 366 with multiple multiple choice format. Clearly, applying the constant cut-off

standard of one and a half standards of deviation away from the mean, petitioner's score was a Pass.

THERE WAS MASSIVE ERROR IN THE GRADING CRITERIA.

C. Petitioner's School Transcript

Year I: 1990-1991

BIOCHEMISTRY	S
GENETICS	S
GROSS ANATOMY	S
HISTOLOGY/EMBRYOLOGY	S
NEUROSCIENCES	S
PHYSIOLOGY	S
Comprehensive Evaluation	S

Year II: 1991-1992

BIOSTATS/EPIDEMIOLOGY	S
HEALTH CARE ISSUES	S
IMMUNOLOGY/MICROBIOLOGY	S
PATHOLOGY	S
PATHOPHYSIOLOGY	S
PHARMACOLOGY	S
PHYSICAL DIAGNOSIS	S
PSYCHIATRY	S
Comprehensive Evaluation	S

Year III Clerkships: 1992-93

FAMILY MEDICINE	U
MEDICINE	S
OBSTETRICS/GYNECOLOGY	S
OPHTHALMOLOGY	S
OTOLARYNGOLOGY	S
PEDIATRICS	S
PSYCHIATRY	S
SURGERY	U

Year IV ELECTIVES: 1993-1994

GEN SURG COMPREHENSIVE	H

II. The serious violations of the laws as mentioned in the constitutional and statutory provisions require the Supreme Court's supervisory power to stop the massive damages inflicted on the American people.

The following newspaper articles are from the Detroit Sunday Journal, July 14, 1996 and the Detroit News, May 2, 1997.

WSU appeals prof's discrimination award

A nationally respected research professor at Wayne State University has been awarded nearly $700,000 in damages by a Wayne County jury that agreed that the school discriminated against her because of her age and tried to force her into retirement.

With legal fees and interest, the award, after a four-month jury trial, could top $1 million. The university filed an appeal on July 1.

Dr. Helene Rauch, 62 years old when she filed suit in 1993, charged that the university reneged on an agreement to allow her to obtain a medical degree to further her research into multiple sclerosis.

After she paid $75,000 to get her medical degree, the school blocked her residency work and tried to get her to

retire or resign, the suit said.

WSU Vice President J. Richard Thordeson testified that having Ph.D. and M.D. degrees might be valuable at the start of a career and not at the end. He said he was also not convinced of the advantage of having the two degrees.

Rauch alleged that the chairman of her department, Dr. James Montgomery, did not discipline a younger professor for referring to her as "an old woman," or for usurping her research and accomplishments in an attempt to get a lucrative grant to fund his own project.

Rauch's lawyer, Jeanne Mirer of Detroit, and Charles Parrish, a past president of WSU's chapter of the American Association of University Professors, accused WSU President David Adamany of orchestrating a

campaign to run Rauch out of the University. The other defendants in the suit were Montgomery and university lawyers Louis Lessem and Daniel Bernard.

In addition to age discrimination, the jury found that Lessem invaded her privacy, retaliated against her and interfered with her contract with Sinai.

"Dr. Adamany got on the stand and talked about the public trust," Mirer said. "What a perversion of the public trust it is to take an international researcher and refuse to let her use her skill for the public good."

Lessem, associate general counsel for WSU, said the university strongly disagreed with the verdict and believed the award was in error.

"There are numerous reasons why we believe it will be overturned on appeal," he said. Lessem said he could not discuss specifics of the case.

University officials initially gave Rauch permission to pursue a medical degree. Later, when Rauch accepted an offer to do residency at Sinai Hospital, the suit said the university interfered.

As a result she lost the last two years of residency training. The school also accused her of violating the school's consulting policy by holding down two full-time jobs. Rauch had offered to turn over her stipend from Sinai to Wayne State.

Rauch was accused of abandoning her university job, even though the suit contends she taught the few classes assigned to her and continued

to supervise research while doing her residency.

A young man was allowed to pursue a medical residency and was paid by the university while doing so, according to the suit. A younger woman in the medical department was allowed to pursue a law degree, with WSU paying her salary and some law school costs.

The suit also charged that Adamany ordered Lessem and Bernard to investigate Rauch's private business dealings, and information was passed to a bank with which Rauch was negotiating to settle a tax debt on a commercial building in which she had invested her savings.

That invasion of her privacy caused her to lose that investment, worth at least $100,000, the suit contended.

When Rauch refused the university's demand that she retire or resign, she was fired in 1991. An arbitrator ordered her reinstated with back pay a year later, saying the university failed to follow its own tenure revocation statutes. The suit contends at Adamany's order, Lessem and Bernard withheld the back pay for six months.

Lessem filed a fraud and breach of contract suit against Rauch that was dismissed in 1993. The judge awarded sanctions of $3,700 against the university for bringing a frivolous suit against her. The university appealed and lost, although the Appeals Court rescinded the sanctions.

"I was doing quite well, but they were so obstinate and inflexible. It just takes years out of your life," Rauch told the Sunday Journal."

"This (case) has seen astonishing behavior on Adamany's part, it has been a personal thing with him," Parrish said. "Once he took this thing over, he personally directed the response to her lawsuit."

Attorney Mirer said in testimony, Adamany demonstrated he knew nothing of Rauch's background or her attempts to negotiate with the school or the offers she made to settle the matter.

"He was just fixed on her holding two jobs even though there is a waiver provision (in school regulations) if the job benefits the university. He admitted he never considered it," Mirer said.

Rauch came to Wayne from Stanford University in 1975 and in 1982 she was awarded tenure as an associate professor. In the 1980s she was lauded

for the instrumental role she played in getting WSU an unprecedented $600,000-per-year grant to study causes of multiple sclerosis.

At that time she received permission from the then-dean of the medical school to pursue an M.D. degree. While attending medical school, she continued to supervise the grant by telephone, returned to the university periodically to oversee research on the grant and published several scientific papers, the suit said.

Her troubles began when a new medical dean was appointed and the $600,000 grant was not renewed.

Rauch said Montgomery, chairman of the immunology and microbiology department, blamed her for losing the grant. She said Montgomery blocked

her efforts to find funding for her research, refused to give her a merit raise after she earned the M.D. degree, and discouraged other faculty from inviting her to participate in a renewed effort to get another research grant.

Rauch said she offered to give up her tenure in return for a contract with WSU and was turned down.

"It's a shame to let something you spent years cultivating go to waste," the soft-spoken Rauch commented. Of her research career, she added, "It's just not fair for someone to take it away, it's yours, you earned it."

Women charge WSU, Hutzel fostered hostile work conditions

Ex-workers say doctors insulted, abused employees, patients. Lawyer denounces suits as "smear tactic."

By Rusty Hoover, The Detroit News

Several Hutzel Hospital doctors engaged in sexist behavior ranging from insulting comments to abuse of patients, five former hospital employees allege in three lawsuits filed in Wayne County Circuit Court.

The allegations attempt to document an intimidating, hostile and offensive work environment.

A lawyer for the defendants called the suits a "smear" campaign.

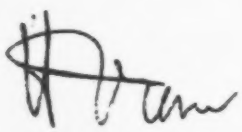
The main suit, involving three women, alleges Hutzel and Wayne State University created and permitted hostile environment for women.

Defendants are Hutzel, Wayne State,

CONCLUSION

For the foregoing reasons, the massive fraud in granting degrees by respondents that is equivalent to sending bombs all over the nation, destroying society, the genocidal violations of the laws as stated in the petition against the will of the people, the petition for a writ of certiorari must be granted.

Respectfully submitted,



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July 5, 1997

APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 96-1434

MANH TRAN
Plaintiff-Appellant.

v.

WAYNE STATE UNIVERSITY;
J. H. ISAACSON; MARILYN
WILLIAMSON, et al.
Defendants-Appellees,

and

HARPER HOSPITAL,
Defendant.

Before BROWN, BOGGS and BATCHELDER, Circuit Judges.

ORDER

Manh Tran appeals a District Court grant of Summary Judgment for Defendants and a District Court Judgment dismissing his Complaint for failure to state a claim upon which relief can be granted in two civil rights actions filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon

examination. this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Tran filed an initial Complaint in the District Court alleging that he was subjected to harassment and ultimately was dismissed from the Wayne State University Medical School for discriminatory reasons. Plaintiff named as Defendants the Wayne State University Medical School, the Harper Hospital in Detroit, Michigan and Dr. J. H. Isaacson, a former faculty member at the medical school, in an unspecified capacity. Plaintiff sought punitive damages and reinstatement to the medical school.

Thereafter, the District Court granted Defendants' Motion To Require Plaintiff To Provide A More Definite Statement Of His Claims pursuant to Fed. R. Civ. P. 12(e). Plaintiff responded to the District Court's Order by reiterating the allegations of his Complaint and asserting that his claims are: (1) violation of his rights to due process and equal protection; (2) discrimination and harassment due to race, sex and national origin under state and federal civil rights laws; (3) breach of contract by the Wayne State University Medical School; (4) diversity of citizenship jurisdiction; and (5) malicious libel by the individual Defendant. Defendant Harper Hospital then moved pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the Complaint for failure to state a claim upon which relief can be granted. The District Court granted the motion and dismissed the Complaint with respect to Defendant Harper Hospital.

Next, Plaintiff filed a second Complaint in the District Court again alleging that he was harassed and dismissed from the Wayne State University Medical School for discriminatory reasons. In addition, Plaintiff asserted discrimination claims

under Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq. and § 2000e, et seq., and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88. Plaintiff named as Defendants six Wayne State University employees in their individual capacities, Harper Hospital and five of its employees individually and in their official capacities, and Dr. Isaacson, individually and in his official capacity. Plaintiff sought compensatory and punitive damages. The case was reassigned to Judge Hackett, before whom the first civil action was pending.

Defendants in the second civil action moved the Court for Summary Judgment or for a more definite statement, and the remaining Defendants in the first action moved the Court to dismiss the Complaint or for Summary Judgment. Plaintiff responded in opposition to the motions, and Defendants submitted replies. The District Court granted Defendants' motions and entered separate judgments in favor of Defendants. Plaintiff filed a timely notice of Appeal taken from both judgments.

Generally, this Court will review de novo the dismissal of a Complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). *Allard v. Weizman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1239-40 (6th Cir. 1993). The Court must construe the Complaint in the light most favorable to the Plaintiff, accept all factual allegations as true, and determine whether the Plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Id.* at 1240. However, mere conclusions need not be accepted as true under this standard. *Ana Leon T. v. Federal Reserve Bank*, 823 F.2d 928, 930 (6th Cir.) (per curiam), *cert. denied*, 484 U.S. 945 (1987). A grant of summary judgment

will be reviewed de novo on appeal. *Brooks v. American Broadcasting Cos.*, 932 F.2d 495. 500 (6th Cir. 1991). Generally, Summary Judgment is proper where "the pleadings, depositions, Answers to Interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to [a] judgment as a matter of law." *Canderm Pharmacal, Ltd. v. Elder Pharm., Inc.*, 862 F.2d 597, 601 (6th Cir. 1988) (quoting Fed. R. Civ. P. 56(c)). Only factual disputes that might affect the outcome of a lawsuit under substantive law are "material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To be "genuine," a dispute must involve evidence upon which a jury could find for the nonmoving party. *Id.* The burden is upon the moving party to show "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Thereafter, the nonmoving party must present significant probative evidence in support of the Complaint to defeat the motion. *Anderson*, 477 U.S. at 249-50. The nonmoving party is required to show more than a metaphysical doubt as to the existence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Here, Plaintiff did not establish a prima facie case of discrimination and failed to state a claim upon which relief can be granted under § 1983. *See Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Hankins v. Temple Univ.*, 829 F.2d 437, 443-45 (3d Cir. 1987); *Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716, 724 (6th Cir. 1996).

Further, Plaintiff's assertion that Wayne State University acted fraudulently was not asserted in the District Court and should not be considered in the first instance on appeal. *See*

Foster v. Barlow, 6 F.3d 405, 407 (6th Cir. 1993). Moreover, the pendent state law claims asserted by Plaintiff in the District Court have not been raised on appeal and should be deemed abandoned. *See Boyd v. Ford Motor Co.*, 948 F.2d 283, (6th Cir. 1991), *cert. denied*, 503 U.S. 939 (1992). However, it is noted that these claims are unsupported by any factual basis in any event.

For the foregoing reasons, the judgments of the District Court are affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ Court Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 96-1434

MANH TRAN
Plaintiff-Appellant.

v.

WAYNE STATE UNIVERSITY;
J. H. ISAACSON; MARILYN
WILLIAMSON, et al.
Defendants-Appellees,

and

HARPER HOSPITAL,
Defendant.

Before BROWN, BOGGS and BATCHELDER, Circuit Judges.

ORDER

The Court having received a Petition for Rehearing En Banc. and the petition having been circulated not only to the original panel members but also to all other active Judges of this Court, and no Judge of this Court having requested a vote on the suggestion of rehearing en banc, the Petition for Rehearing has been referred to the original panel.

The panel has further reviewed the Petition for Rehearing

and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green, Clerk

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANH TRAN,

Plaintiff,

Case No. 95-CV-72662-DT

vs.

HON. BARBARA K. HACKETT

WAYNE STATE UNIVERSITY,
HARPER HOSPITAL, and
J.H. ISAACSON,

Defendants.
_____/

JUDGMENT

The above-entitled matter has come before the Court on Defendants' Motion To Dismiss or For Summary Judgment, and in accordance with the Court's December 31, 1995, Order Granting Defendant Harper Hospital's Motion To Dismiss, and the Court's Order Granting Defendants Wayne State University and J.H. Isaacson's Motion To Dismiss or For Summary Judgment entered on March 19, 1996,

IT IS ORDERED AND ADJUDGED that judgment hereby is GRANTED in favor of Defendants.

Dated at Detroit, Michigan, this 19th day of March, 1996.

/s/ John P. Mayer, Clerk of the Court
by Deputy Clerk

Approved:
/s/ Barbara K. Hackett
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANH TRAN,

Plaintiff,

Case No. 95-CV-72662-DT

vs.

HON. BARBARA K. HACKETT

WAYNE STATE UNIVERSITY,
HARPER HOSPITAL, and
J.H. ISAACSON,

Defendants.
_____/

ORDER GRANTING DEFENDANTS WAYNE STATE UNIVERSITY AND J.H. ISAACSON'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Pro se Plaintiff Manh Tran, a former student at Wayne State University's School of Medicine, filed suit against Wayne State University and J.H. Isaacson[1] for alleged violations of his right to due process, equal protection, and freedom of expression, as well as race, sex, and national origin discrimination, breach of contract, and libel, all stemming from Plaintiff's academic dismissal. Defendants Wayne State University and J.H. Isaacson have filed a Motion To Dismiss or For Summary Judgment. For the following reasons, Defendants'

[1]Defendant Harper Hospital has already been dismissed from this case.

motion shall be granted.

I.

BACKGROUND

Plaintiff began medical school at Wayne State University (WSU) in 1990. During his first two years, which largely consist of classroom learning, he progressed satisfactorily. However, in his third year of medical school, during which students are required to participate in clerkships or internships in eight different areas of medical practice, Plaintiff received unsatisfactory grades in his family medicine and surgery clerkships. His medicine clerkship was originally graded as unsatisfactory, but was changed to satisfactory after a re-examination.

On August 6, 1993, the Medical School's Promotions Committee reviewed Plaintiff's third year performance, and based upon comments received from Plaintiff's evaluators, voted unanimously to require that Plaintiff (1) undergo a mental-emotional status evaluation; (2) appear before the Promotions Committee upon completion of the evaluation for a hearing to determine his ongoing status as a medical student; and (3) not be permitted to continue with year four until a further decision by the Promotions Committee.

As required by the School of Medicine, Plaintiff appeared for an evaluation by Dr. Robert Niccolini, a psychiatrist. As a result of his evaluation and the psychological testing done on Plaintiff, Dr. Niccolini concluded:

> This patient presents as an extremely rigid and unbending individual who shows evidence of

> severe personality disorder with associated schizoid and passive-aggressive features. . . The personality disorder traits are considered severe enough to interfere with this young mans [sic] ability to complete medical school and function effectively as a physician. At the very minimum it is recommended that Mr. Tran repeat the entire third year program and be involved in intense psychotherapy during the entire year. The prognosis for his being able to successfully complete medical school, even with this approach remains extremely guarded.

After receiving Dr. Niccolini's evaluation, the Promotions Committee met again on September 22, 1993, and decided that Plaintiff would not at that time be promoted to year four. Instead, the Committee advised Plaintiff by letter that he would be ineligible for promotion until meeting the following conditions: 1) He must repeat and pass the entire year three curriculum; 2) He must be in psychotherapy prior to commencing the year three curriculum; 3) His therapist must submit monthly reports, the first of which was due no later than November 1, 1993; 4) He must obtain an evaluation of his English language skills; and, 5) He would receive any credit for year four work satisfactorily completed. Plaintiff asked the Promotions Committee to reconsider its decision, but the Committee voted against him at its meeting on October 29, 1993.

Plaintiff did not re-enroll in year three and he apparently did not comply with the other provisions specified by the Promotions Committee. However, in February of 1994, Plaintiff began sending numerous hostile and threatening letters

to Dr. J.H. Isaacson, a former member of the WSU Medical School faculty, and to Dr. Isaacson's new employer. Isaacson had been one of Plaintiff's evaluators during his primary care clerkship. Although Isaacson did observe problems with Plaintiff, he graded Plaintiff as satisfactory for the clerkship.

When the Promotions Committee became aware of Plaintiff's letters to Isaacson and to the Cleveland Clinic where Isaacson was then employed, the Committee voted on February 25, 1994, to refer Plaintiff for a behavioral evaluation. This is a process provided for by the University's guidelines for assisting persons with behavioral problems. The guidelines provide that a student may be referred to a behavior evaluation committee if a student (1) threatens himself or others and/or (2) appears to have a behavioral or psychological problem which severely impairs his ability to function within the university environment. On March 9, 1994, the Promotions Committee formally requested the dean of the medical school to refer Plaintiff to the Behavior Evaluation Committee. The committee requested that the Behavior Evaluation Committee determine whether or not Plaintiff is a danger to himself or to faculty members, and further to decide whether Plaintiff is fit to continue the study of medicine.

On March 21, 1994, Robert J. Sokol, Dean of the medical school, requested Provost Marilyn Williamson to convene the Behavioral Evaluation Committee to review Plaintiff's status. On March 29, 1994, the Provost wrote to Dr. Ralph Rubenstein, Chair of the Behavioral Evaluation Committee, and asked him to convene the committee promptly to hear Plaintiff's case.

On May 13, 1994, the Behavioral Evaluation Committee provided its report to Dean Sokol. The committee summarized

its findings as follows:

> Mr. Tran is a bright young man who has done better than average in the first two years of classroom work. His problems began in year three when his interpersonal interactions with interns, residents, and attendings became a source of intermittent problems. Mr. Tran's personality traits are rigidly fixed and egosyntonic. He perceives his problems as entirely outside of himself. Such a dynamic presence does not bode well for resolution in therapy.

Pursuant to paragraph 4.0 of the guidelines, Dean Sokol provided Plaintiff with a copy of the committee's summary of the nature of the problem, with written notice of an opportunity to be heard by the Dean. On June 13, 1994, the Dean met with Plaintiff, along with Dr. Charles Whitten, then Associate Dean of the medical school.

Paragraph 5.0 of the guidelines provides: "The Dean shall decide on the actions to be taken, which may include separation from the University, and will provide written notice of that action to the student." Accordingly, following the meeting on June 13, 1994, Dean Sokol notified Plaintiff that based on his noncompliance with conditions for re-admission and the belief that further delay would be neither useful nor helpful to Plaintiff, the Dean was separating Plaintiff from the School of Medicine and the university.

On June 18, 1994, Plaintiff wrote to Dean Sokol asking for reconsideration. On June 26, 1994, the Dean denied Plaintiff's request.

As permitted by the guidelines, Plaintiff appealed to the Provost. On July 19, 1994, Provost Williamson wrote to Plaintiff, advising him that she had reviewed the entire record of his case as to substance and procedure and that she found no basis to reverse the Dean's decision to separate Plaintiff from the School of Medicine and the university.

On July 3, 1995, Plaintiff initiated this lawsuit. On September 28, 1995, following the Court's Order Granting Defendants' Motion For More Definite Statement, Plaintiff filed an Amended Complaint, including the following allegations: (1) Due Process violation because his seat at the Medical School was a property interest; (2) Breach of contract by WSU in failing to provide a quality education as advertised; (3) Discrimination and harassment based on race, sex and national origin; (4) Violation of the first amendment's guarantee to freedom of expression; (5) Equal protection violation in surgery rotation and exam; and, (6) Libel by Isaacson because of his evaluation questioning Plaintiff's attitude about HIV patient.

Now before the Court is Defendants WSU and Isaacson's Motion To Dismiss or For Summary Judgment.

II.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12 (b) (6) authorizes a Court to dismiss a claim on an issue of law. "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In considering a

Rule 12 (b) (6) motion, a Court "must accept all of Plaintiff's factual allegations as true and determine whether any set of facts consistent with the allegations would entitle the Plaintiff to relief." G.M. Engineers and Assoc., Inv. v. West Bloomfield Tp., 922 F.2d 328, 330 (6th Cir. 1990). Although federal Courts hold the pro se Complaint to a "less stringent standard" than those drafted by attorneys, Haines v. Kerner, 404 U.S. 519, 520 (1972), such Complaints must plead sufficient facts to show that a legal wrong has been committed from which Plaintiff may be granted relief.

Federal Rule of Civil Procedure 56 (c) empowers the Court to render Summary Judgment "forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The Supreme Court has affirmed the Court's use of Summary Judgment as an integral part of the fair and efficient administration of justice. The procedure is not a disfavored procedural shortcut. Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986).

"[T]he standard for determining whether Summary Judgment is appropriate is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Booker v. Brown & Williamson Tobacco Co., Inc., 879 F.2d 1304, 1310 (6th Cir. 1989) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). "[T]he mere existence of some alleged factual dispute between the parties will not defeat the otherwise properly supported Motion for Summary Judgment; the requirement is that there be no genuine issue of material fact." Anderson, 477 U.S. at 247-48. The

movant must conclusively show "that there exists no genuine issue as to a material fact and that the evidence together with all inferences to be drawn therefrom must be considered in the light most favorable to the party opposing the motion." Watkins v. Northwestern Ohio Tractor Pullers Ass'n, Inc., 630 F.2d 1155, 1158 (6th Cir. 1980).

If the movant established by use of the material specified in Rule 56 (c) that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the opposing party must come forward with "specific facts showing that there is a genuine issue for trial." First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 270 (1968). Mere allegations of denials in the non-movant's pleadings will not meet this burden. Anderson, 477 U.S. at 248. The non-moving party to a Summary Judgment Motion cannot rest on its pleadings to avoid Summary Judgment. It must support its claim with some probative evidence. Kraft v. United States, 991 F.2d 292, 296 (6th Cir.), cert. denied, 114 S.Ct. 467 (1993).

III.

DISCUSSION

A. Due Process

Plaintiff conclusorily alleges that Defendants violated his procedural and substantive due process rights by dismissing him from the WSU Medical School because he had a property interest in his seat at the school. On the other hand, Defendants argue that even assuming the existence of a property interest, Plaintiff was afforded at least as much due process as the Fourteenth Amendment requires. The Court

agrees.

The United States Supreme Court has held that formal hearings before decisionmaking bodies need not be held in the case of academic dismissals from public schools. Board of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 90 (1978).

> Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of the cumulative information and is not readily adapted to the procedural tools of judicial or administrative decisionmaking.

Id.

In this case, Plaintiff was fully informed of the Medical School's skepticism of his ability to perform adequately as a medical doctor. During every step of the process, Plaintiff was afforded the right to make his case before each committee, to abide by the conditions established for his readmission, and to appeal. Plaintiff met with the Dean of the medical school, and his appeal was reviewed by the Provost of WSU. Further, WSU and the medical school adhered to their published guidelines for assisting persons with behavioral problems. The Court finds that these procedures were sufficient under the Due Process Clause of the Fourteenth Amendment.

Similarly, even if Plaintiff's assumed property interest gave rise to a substantive due process right answer "clearly arbitrary and capricious" dismissal, id. at 91, the record compels the conclusion that the ultimate decision to dismiss Plaintiff was

careful and deliberate.

> When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment (footnote omitted).

Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 255 (1985).

Here, the record unmistakable demonstrates that Defendant's decision was made conscientiously, based on evaluations of Plaintiff by faculty, the Promotions Committee, a psychiatrist, the Behavioral Evaluation Committee, Dean Sokol, Associate Dean Whitten, and provost Williamson. Accordingly, the Court determines that the procedures used by WSU were fair to Plaintiff in every respect, and that WSU acted in good faith. Defendants cannot be accused of concealing nonacademic or constitutionally impermissible reasons for dismissing Plaintiff.

B. Breach of Contract

Plaintiff charges defendants with breach of contract because "the quality of education at Wayne State University is not as advertised." In order to recover on a breach of contract theory, Plaintiff must prove (1) that a contract existed between the parties; (2) the terms of the contract; (3) Defendants breached the contract; and, (4) that the breach caused injury to

Plaintiff. Platsis v. E.F. Hutton & Co., Inc., 642 F.Supp. 1277, 1309, (W.D. Mich. 1986), aff'd, 829 F.2d 13 (6th Cir. 1987), cert. denied, 485 U.S. 962 (1988).

After careful consideration, the Court has found no evidence suggesting that WSU bound itself either expressly or impliedly. The WSU catalog to which Plaintiff refers does not amount to an unqualified promise, nor does it entitle Plaintiff to any contractual rights. Furthermore, Plaintiff has failed to demonstrate how WSU's education was anything less than quality. Therefore, Plaintiff's breach of contract claim is without merit.

C. Discrimination

Plaintiff broadly asserts that Defendants discriminated against him, harassed him, and denied him equal protection on the basis of race, sex and national origin. To succeed in his claims, Plaintiff must show that he is a member of a protected group and that he has been discriminated against or harassed on the basis of his group membership, either through a predisposition by Defendants to such discrimination, or by disparate treatment between Plaintiff and others who do not belong to the protected group. However, Plaintiff has not shown one discriminatory or harassing act by Defendants, nor has Plaintiff identified a single incident in which a person of his race, sex, or national origin was treated differently for the same conduct or academic infirmities.

To the extent that the Plaintiff alleges a claim under Title VII, 42 U.S.C. § 2000e-5, filing a Complaint with the Equal Employment Opportunity Commission and obtaining a right-to-sue letter are necessary prerequisites to this action. Puckett v.

Tennessee Eastman Co., 889 F.2d 1481, 1486 (6th Cir. 1989). Plaintiff has satisfied neither of these requirements, nor could he because Title VII protects employees against wrongful employment actions. Therefore, Plaintiff's claims of discrimination, harassment, and denial of his right to equal protection must be dismissed.

Additionally, Plaintiff's attempt to state a claim against WSU under 42 U.S.C. § 1983 also fails because WSU is a state instrumentality immunized from liability for damages under the Eleventh Amendment. Absent an express and specific waiver by a state of its immunity, the states remain immune from suit in Federal Court. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). Although sovereign immunity otherwise applicable to the states and their instrumentalities may be legislatively abrogated, any such abrogation of immunity must be explicit, unambiguous, and show clear congressional intention to subject the states to suit in Federal Court. Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 243 (1985). Here, there is no legislative abrogation of WSU's immunity. Quern v. Jordan, 440 U.S. 332 (1979).

D. Freedom of Speech

Plaintiff received a grade of unsatisfactory in his family medicine clerkship, apparently for failing the final exam by four points, which Plaintiff claims he should have received. Dr. Mark Ebell, coordinator of the family medicine rotation, took four points off his exam because Plaintiff gave answers about types of abdominal pain and examples that were not in the given textbook. Plaintiff contends that this "policy of limiting answers to one particular table of a textbook of the Family Medicine Department is a violation of the First Amendment of the

Constitution." Although every student has probably wished for such broad constitutional protection at some point in their academic career, restricting the source of correct answers to the stated textbook by faculty members at state universities does not constitute a First Amendment violation. As long as Dr. Ebell's grading criteria was applied evenly to everyone taking the exam, and there is no reason to believe it was not, Plaintiff's grade was fair.

E. Libel

Finally, Plaintiff accused Defendant Isaacson of libel based on Isaacson's evaluation of Plaintiff in his primary care clerkship. IN the evaluation, Isaacson raised questions regarding Plaintiff's attitude, however, Isaacson ultimately graded Plaintiff as satisfactory in the clerkship.

A claim of libel requires that Plaintiff prove (1) a false and defamatory statement concerning plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the Defendant; and, (4) either defamation per se or the existence of special harm caused by the publication. Rouch v. Enquirer & News of Battle Creek, 427 Mich. 157, 173-73, 398 N.W. 2d 245, 252 (1986).

In this case, Plaintiff has failed to even allege any of the necessary elements to prove libel. Plaintiff has not shown that Isaacson's evaluation was false or defamatory, especially since the concerns expressed in Isaacson's evaluation were shared by others including psychiatrist Dr. Niccolini, the Behavioral Evaluation Committee, the Promotions Committee, the Dean, the Associate Dean, and the Provost. Nor is there an unprivileged publication because it was Isaacson's exposure to

Plaintiff as a faculty member that resulted in the challenged evaluation. Additionally, Plaintiff received a satisfactory grade in the clerkship, so Isaacson's final grade did not influence Plaintiff's dismissal. Rather, Plaintiff was dismissed because the WSU School of Medicine determined that Plaintiff was unsuited for the practice of medicine.

IV.

CONCLUSION

The Court finds the record in this case devoid of any indication that WSU's decision to dismiss Plaintiff from the medical school was based on bad faith, ill will, or other impermissible ulterior motives. To the contrary, the evidence demonstrates that the decision was reached in a fair and impartial manner, and only after careful and deliberate consideration. Defendants took no arbitrary, capricious, or unlawful action toward Plaintiff; the WSU Medical School had good reason to dismiss Plaintiff from the program. Accordingly, Defendants WSU and Isaacson's Motion to Dismiss or For Summary Judgment hereby is GRANTED. Any other motions pending in this case are moot.

SO ORDERED.

/s/ Barbara K. Hackett, United States District Judge

Dated: March 19, 1996.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANH TRAN,

Plaintiff,

Case No. 95-CV-72662-DT

vs.

HON. BARBARA K. HACKETT

WAYNE STATE UNIVERSITY'S EMPLOYEES IN THEIR INDIVIDUAL CAPACITIES, HARPER HOSPITAL, THEIR EMPLOYEES, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES, and J.H. ISAACSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,

Defendants.

_____/

ORDER OF DISMISSAL

Pro se Plaintiff Manh Tran filed a previous lawsuit in this Court against Wayne State University (WSU), J.H. Isaacson (Isaacson), and Harper Hospital (Harper) for alleged violations of his right to due process, equal protection, and freedom of expression, as well as race, sex, and national origin discrimination, breach of contract, and libel, all stemming from Plaintiff's academic dismissal from WSU's Medical School following his residency at Harper Hospital. Plaintiff's Complaint in that case was dismissed against Harper failure to

state a claim or request any relief from Harper, and against WSU and Isaacson for failure to properly allege or support an allegation of any constitutional violations. Now before the Court is Plaintiff's second lawsuit against the same parties for the same conduct and arising out of the same transactions and occurrences. For the following reasons, Plaintiff's Complaint shall be dismissed.

Plaintiff accuses the following Defendants of "discrimination and harassment": (1) WSU's employees in their individual capacities: Marilyn Williamson (Provost), Robert Sokol (Dean), Robert Frank (Associate Dean), Mr. Waller (Member of the Promotional Review Committee), Mr. Rillema (Member of the Promotional Review Committee), and Mark Ebell (Coordinator of the Family Medicine rotation); (2) Harper Hospital, their employees, individually and in their official capacities: Paul Ragatzki, J. Appel, Kevin Callaghan; and, (3) J.H. Isaacson and Andrea Fong. First, Plaintiff conclusorily accuses each of the WSU Defendants of discrimination for their part in his academic dismissal from WSU Medical School. Next, Plaintiff broadly charges the Harper Defendants, Isaacson, and Andrea Fong with discrimination apparently because each of them either questioned Plaintiff's Abilities, argued with him, or "lied" to him.

To succeed in his claims that Defendants discriminated against him, harassed him, and denied him equal protection on the basis of race, sex, and national origin, Plaintiff must show that he is a member of a protected group and that he has been discriminated against or harassed on the basis of his group membership, wither through a predisposition by Defendants to such discrimination, or by disparate treatment between Plaintiff and others who do not belong to the protected group. However,

Plaintiff has not shown one discriminatory or harassing act by Defendants, nor has Plaintiff identified a single incident in which a person not of his race, sex, or national origin was treated differently for the same conduct or academic infirmities.

To the extent that Plaintiff alleges a claim under Title VII, 42 U.S.C. § 2000e-5, filing a Complaint with the Equal Employment Opportunity Commission and obtaining a right-to-sue letter are necessary prerequisites to this action. Puckett v. Tennessee Easeman Co., 889 F.2d 1481, 1486 (6th Cir. 1989). Plaintiff has satisfied neither of these requirements, nor could he because Title VII protects employees against wrongful employment actions. Therefore, Plaintiff's claims of discrimination, harassment, and denial of his right to equal protection necessarily fail. Accordingly, Plaintiff's Complaint is hereby DISMISSED.

SO ORDERED.

/s/ Barbara K. Hackett, United States District Judge

Dated: March 20, 1996

APPENDIX C

CONSTITUTIONAL PROVISIONS

(AMENDMENT XIX)

Section 1.

(Citizenship Rights Not to Be Abridged by States)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

42 USC Sec 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Article VIII, Section 5

University of Michigan, Michigan State University, Wayne State University; controlling boards.

The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution

under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a sucessor has been nominated and elected as provided by law.

Supreme Court, U.S.
FILED
AUG 8 1997
CLERK

No. 97-64

In The

Supreme Court of the United States

October Term, 1996

MANH TRAN,

Petitioner,

v.

WAYNE STATE UNIVERSITY AND ITS EMPLOYEES, HARPER HOSPITAL AND ITS EMPLOYEES, J.H. ISAACSON, RESPONDENTS' EMPLOYERS AND FUNDING ORGANIZATIONS AND DEGREE-GRANTING INSTITUTIONS In their official and individual capacities,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For Tie Sixth Circuit

BRIEF N OPPOSITION

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Statement of the Case

This matter comes before the Court on Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, following that court's order affirming the district court's dismissal of two lawsuits filed by Petitioner.

In *Tran I*, Judge Barbara Hackett of the United States District Court for the Eastern District of Michigan entered an order granting Defendants' motion for dismissal and/or summary judgment on March 19, 1996. In *Tran II*, Judge Hackett entered an order of dismissal on March 20, 1996. Although the Sixth Circuit's opinion considered both orders, the appendices attached to the Petition before this court suggests that Petitioner seeks review only of *Tran I*, District Court case no. 95-CV-72662-DT.

On July 3, 1995, Manh Tran (Tran), a former student in the Wayne State University School of Medicine, filed the *Tran I* complaint, making broad, conclusory allegations against the University and J.H. Isaacson (Isaacson) of violations of his right to due process, equal protection, and freedom of expression, as well as race, sex, and national origin discrimination, breach of contract, and libel. Tran alleged that WSU had engaged in negligent hiring and provided him with a poor education. Although not a party to the lawsuit, Tran also alleged that the dean of the medical school acted in bad faith to "reserve medicine for white people" and failed to provide him with equal opportunity and equal protection.

On December 18, 1995, Tran filed the *Tran II* complaint, making the same allegations against Isaacson and other individual defendants.

Manh Tran began medical school at WSU in 1990. During his first two years, which largely consisted of classroom learning, he progressed satisfactorily. In the third year of medical school, during which students are required to participate in clerkships or internships in eight different areas of medical practice, Tran failed. Specifically, Tran received unsatisfactory grades in his family medicine and surgery clerkships. His medicine clerkship was also originally graded as unsatisfactory, but was changed to satisfactory after a re-examination.[1]

On August 6, 1993, the medical school's promotions committee reviewed Tran's third year performance, and, based upon comments received from Tran's evaluators, voted unanimously to require that Tran (1) undergo a mental-emotional status evaluation, (2) appear before the promotions committee upon completion of the evaluation for a hearing to determine his ongoing status as a medical student, and (3) not be permitted to continue with year four until a further decision by the promotions committee.[2]

As required by the School of Medicine, Tran appeared for an evaluation by Dr. Robert Niccolini, a psychiatrist.[3] As a result of his evaluation and the psychological testing done on Tran, Dr. Niccolini concluded:

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[1] The facts pertaining to Tran's progress in medical school are taken from his medical school transcript, a copy of which is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit A.

[2] A copy of the letter advising Tran of these requirements is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit B.

[3] Dr. Niccolini's report is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit C.

> This patient presents as an extremely rigid and unbending individual who shows evidence of severe personality disorder with associated schizoid and passive-aggressive features. . . . The personality disorder traits are considered severe enough to interfere with this young mans [sic] ability to complete medical school and function effectively as a physician. At the very minimum it is recommended that Mr. Tran repeat the entire third year program and be involved in intense psychotherapy during the entire year. The prognosis for his being able to successfully complete medical school, even with this approach, remains extremely guarded.

After receiving Dr. Niccolini's evaluation, the promotions committee met again on September 22, 1993, and decided that Tran would not at that time be promoted to year four. Instead, the committee advised Tran by letter[4] that he would be ineligible for promotion until meeting the following conditions:

1. He must repeat and pass the entire year three curriculum;
2. He must be in psychotherapy prior to commencing the year three curriculum;
3. His therapist must submit monthly reports, the first of which was due no later than November 1, 1993;
4. He must obtain an evaluation of his English language skills; and

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[4] A copy of the letter is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit D.

5. He would receive any credit for year four work satisfactorily completed.

Tran asked the promotions committee to reconsider its decision, but the committee voted against him at its meeting of October 29, 1993.

Tran did not re-enroll in year three, and he apparently did not comply with the other provisions specified by the promotions committee. However, in February of 1994, Tran began sending numerous hostile and threatening letters[5] to Dr. J.H. Isaacson, a former member of the medical school faculty. Isaacson had been one of Tran's evaluators during his primary care clerkship. Ironically, although Isaacson observed problems which needed to be addressed, he graded Tran as satisfactory for the clerkship.

When the promotions committee became aware of Tran's letters to Isaacson and to the Cleveland Clinic, where Isaacson was then employed, the committee voted on February 25, 1994, to refer Tran for a behavioral evaluation. This is a process provided for by the University's guidelines for assisting persons with behavioral problems.[6] The guidelines provide that a student may be referred to a behavior evaluation committee if a student (1) threatens himself or others and/or (2) appears to have a behavioral or psychological problem which severely

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[5] Copies of Tran's letter to Isaacson and to Isaacson's new employer are attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit F.

[6] A copy of the guidelines is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit H.

impairs his ability to function within the University environment. On March 9, 1994, the promotions committee formally requested the dean of the medical school to refer Tran to the behavior evaluation committee.[7] The committee requested that the behavior evaluation committee determine whether or not Tran was a danger to himself or to faculty members, and further to decide whether Tran was fit to continue the study of medicine.

On March 21, 1994, Robert J. Sokol, dean of the medical school, requested Provost Marilyn Williamson to convene the behavior evaluation committee to review Tran's status. On March 29, 1994, the Provost wrote to Dr. Ralph Rubenstein, chair of the behavior evaluation committee, and asked him to convene the committee promptly to hear Mr. Tran's case.[8]

On May 13, 1994, the behavioral evaluation committee provided its report to Dean Sokol.[9] The committee summarized its findings as follows:

> Mr. Tran is a bright young man who has done better than average in the first two years of classroom work. His problems began in year three when his interpersonal interactions with

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[7] A copy of this March 9 memorandum is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit I.

[8] A copy of the Provost's March 29, 1994, letter is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit J.

[9] A copy of the report is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit K.

> interns, residents, and attendings became a source of intermittent problems.
>
> Mr. Tran's personality traits are rigidly fixed and egosyntonic. He perceives his problems as entirely outside of himself. Such a dynamic presence does not bode well for resolution in therapy.

Pursuant to paragraph 4.0 of the guidelines, Dean Sokol provided Tran with a copy of the committee's summary of the nature of the problem, with written notice of an opportunity to be heard by the dean. On June 13, 1994, the dean met with Tran, along with Dr. Charles Whitten, then associate dean of the medical school.

Paragraph 5.0 of the guidelines provides:

> The Dean shall decide on the actions to be taken, which may include separation from the University, and will provide written notice of that action to the student . . .

Following the meeting on June 13, Dean Sokol notified Tran that, based on his noncompliance with conditions for re-admission and the belief that further delay would be neither useful nor helpful to Tran, the dean was separating Tran from the School of Medicine and the University.[10]

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[10] A copy of the Dean's letter is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit L.

On June 18, 1994, Tran wrote to Dean Sokol asking for reconsideration. On June 26, 1994, the dean denied Tran's request.[11]

As permitted by the guidelines, Tran appealed to the provost, Marilyn Williamson. On July 19, 1994, Provost Williamson wrote to Tran, advising him that she had reviewed the entire record of his case as to substance and procedure and that she found no basis to reverse the dean's decision to separate Tran from the School of Medicine and the University.[12]

Argument

It is clear from her opinion in *Tran I* that Judge Hackett dismissed Tran's breach of contract and due process claims under F. R. Civ. P. 56. Tran's discrimination, freedom of speech, and libel claims were dismissed under F. R. Civ. P. 12(b)(6). Finally, Petitioner's discrimination claim against the University under 42 U.S.C. § 1983 was dismissed based upon the University's Eleventh Amendment immunity. In *Tran II*, Judge Hackett dismissed Tran's claims of discrimination, harassment, and denial of

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[11] A copy of the Dean's June 26 letter is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit M.

[12] A copy of the Provost's letter is attached to Defendant's Brief in Support of Motion to Dismiss (Tran I docket entry 35) as Exhibit N.

equal protection for the same reasons they were dismissed in *Tran I.*[13]

I. PETITIONER FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

In order to survive a 12(b)(6) motion to dismiss, the complaint must set forth enough information to outline the elements of a claim or to permit inferences to be drawn that the elements exist. *Jenkins v. McKeithen,* 395 U.S. 411, 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969); *German v. Killeen,* 495 F. Supp. 822 (E.D. Mich. 1980). Conclusory allegations are not acceptable, where no facts are alleged to support the conclusion or where the allegations are contradicted by the facts themselves. *Vermillion Foam Products Co. v. General Electric Co.,* 386 F. Supp. 255 (E.D. Mich. 1974).

In this case, Tran's complaints are broad and quite conclusory, failing to allege the elements of any claim. For example, a claim under the due process clause requires that a plaintiff allege four elements: (1) a recognized liberty or property interest, (2) at least a temporary deprivation of the liberty or property, (3) some form of state action, and (4) the assertion of a governmental or public reason for the deprivation. See e.g. *Craig v. Carson,* 449 F. Supp. 385, 390 (M.D. Fla. 1978), and cases cited therein.

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[13] The dismissal in Tran II was on the court's own motion. The court did not specify whether the complaint was being dismissed under rule 12(b)(6) or 56, but the reasoning in the Tran II dismissal tracks the reasoning in the Tran I dismissal, so it may be inferred that both rules were utilized.

Petitioner has not alleged a recognized liberty or property interest, nor has he demonstrated the infirmity of any reasons cited for his removal from the medical school and the University.

With regard to his other constitutional claims, Petitioner has not alleged in any way any facts to support a conclusion that he has been denied equal protection or that his freedom of expression has been impaired.

With regard to Petitioner's claims of race, sex, and national origin discrimination, he must show that he is a member of a protected group and that he has been discriminated against on the basis of his group membership, either through a predisposition by defendants to such discrimination or by disparate treatment of plaintiff and others who do not belong to the protected group. Petitioner has not alleged a single incident in which a person not of his race, sex, or national origin has been treated differently for the same conduct or academic infirmities.

Petitioner also broadly alleged libel against Defendants. A claim of libel requires that a plaintiff allege (1) a false and defamatory statement concerning plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting to at least negligence on the part of defendants, and (4) either defamation per se or the existence of special harm caused by the publication. *Rouch v. Enquirer & News of Battle Creek*, 427 Mich. 157, 174-175; 398 N.W. 2d 245 (1986). Obviously, Petitioner's complaint has not met this burden.

Petitioner also alleged a breach of contract. In order to recover on this theory, Tran must prove (1) that a contract existed between the parties, (2) the terms of the

contract, (3) the defendants breached the contract, and (4) that the breach caused Tran's injuries. *Platsis v. E.F. Hutton & Co., Inc.*, 642 F. Supp. 1277 (W.D. Mich. 1986), *aff'd* 829 F.2d 13 (6th Cir. 1987). It is apparent from even a cursory review of Tran's complaint that he has not pled the required elements for breach of contract.

II. AS TO HIS DISCRIMINATION CLAIMS, PETITIONER HAS NOT MET THE NECESSARY PREREQUISITES.

To the extent that Petitioner alleges claims under Title VII, 42 U.S.C. §2000e-5, filing a complaint first with the U.S. Equal Employment Opportunity Commission and receiving a right-to-sue letter are necessary prerequisites to this action. *Puckett v. Tennessee Eastman Co.*, 889 F.2d 1481 (6th Cir. 1989). To Respondents' knowledge, Petitioner has not filed a claim with the EEOC, nor has he received a right-to-sue letter. Certainly, he has not alleged these necessary prerequisites in his complaint.[14]

III. PETITIONER'S COMPLAINTS LARGELY ATTACK THE WISDOM OF DECISIONS LEFT TO THE SOUND DISCRETION OF THE UNIVERSITY.

When analyzing the propriety of the University's academic decisions regarding Tran, it is important to keep

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[14] Although Plaintiff attempted to show on appeal that he had a right-to-sue letter, he attached to his brief only complaints filed after his lawsuits had been dismissed.

in mind the judiciary's historical and firmly established deference to academic decision making.

In *Board of Curators, University of Missouri v. Horowitz*, 435 U.S. 78, 55 L. Ed. 2d 124, 98 S. Ct. 948 (1978), this Court considered the proper role of the judiciary in reviewing academic decisions. In *Horowitz*, a student was dismissed from her final year of medical school after expressions of faculty dissatisfaction with her clinical performance. In reversing the Court of Appeals and allowing the dismissal to stand, the Court stated:

> The decision to dismiss Respondent, by comparison, rested on the academic judgment of school officials that she did not have the necessary clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal. Such judgment is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision. *Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and does not readily adapt it to the procedural tools of judicial or administrative decision-making.*
>
> 435 U.S. at 89-90 (emphasis supplied).

Concurring in *Horowitz*, Justice Powell observed:

> University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.
>
> 435 U.S. at 96, n6.

This Court subsequently reaffirmed the notion of judicial deference to academic decisions in *Regents of The University of Michigan v. Ewing*, 474 U.S. 214, 88 L. Ed. 2d 523, 106 S. Ct. 507 (1985), another case in which a student had been dismissed from medical school:

> When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.
>
> 474 U.S. at 225 (footnote omitted). See also *Hines v. Rinker*, 667 F. 2d 699 (8th Cir. 1981).

Historically, the courts have refused to second-guess academic decisions:

> Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, see *Keyishian v. Board of Regents*, 385 U.S. at 603, 17 L. Ed. 2d 629, 87 S. Ct. 675; *Sweezy v. New Hampshire*, 354 U.S. 234, 250, 1 L. Ed. 2d 1311, 77 S. Ct. 1203 (1957) (Opinion of Warren, C.J.), but also and somewhat inconsistently, on autonomous decision-making by the academy itself. See *University of California Regents v. Bakke*, 438 U.S. 265, 312, 57 L. Ed. 2d 750, 98 S. Ct. 2733 (1978) (Opinion of Powell, J.); *Sweezy v. New Hampshire*, 354 U.S. at 263, 1 L. Ed. 2d 1311, 77 S. Ct. 1203 (Frankfurter, J., concurring in result).

> *Regents of The University of Michigan v. Ewing,* 474 U.S. 214, 226, n12, 88 L. Ed. 2d 523, 106 S. Ct. 507 (1985).

In *Crook v. Baker,* 813 F. 2d 88 (6th Cir. 1987), the court quoted approvingly from a decision of the Ohio Supreme Court which observed:

> Academic degrees are a university's certification to the world at large of the recipient's educational achievement and fulfillment of the institution's standards.
>
> 813 F. 2d at 93, quoting *Waliga v. Board of Trustees,* 22 Ohio St. 3d 55, 57; 488 N.E. 2d 850, 852 (1986).

The courts' traditional deference to academic decisionmaking has in turn informed their treatment of due process in the academic setting.

The courts have had numerous opportunities to consider the application of constitutional due process guarantees in the academic setting. This Court compared "academic" due process to "disciplinary" due process in *Horowitz, supra.* Specifically, the Court distinguished the academic concerns present in *Horowitz* from the disciplinary concerns implicated in *Goss v. Lopez,* 419 U.S. 565, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975), a case in which nine students had received disciplinary suspensions for alleged disruptive or disobedient conduct. In distinguishing *Goss,* the Court in *Horowitz* stated:

> The need for flexibility is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct.

> This difference calls for far less stringent procedural requirements in the case of an academic dismissal.
>
> 435 U.S. at 86 (footnote omitted).

The Court further stated more pointedly:

> We fully recognize that the deprivation to which Respondent was submitted – dismissal from a graduate medical school – was more severe than the ten-day suspension to which the high school students were subjected in *Goss*. And a relevant factor in determining the nature of the requisite due process is 'the private interest that [was] affected by the official action.' *Mathews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18 (1976). But the severity of the deprivation is only one of several factors that must be weighed in deciding the exact due process owed. *Ibid. We conclude that considering all relevant factors, including the evaluative nature of the inquiry and the significant and historically supported interest of the school in preserving its present framework for academic evaluations, a hearing is not required by the due process clause of the Fourteenth Amendment.*
>
> 435 U.S. at 86, n3 (emphasis supplied).

Consequently, the procedural due process owed to Petitioner in this case was minimal, with no hearing required. It is equally true that Petitioner's substantive due process rights, if they exist, are likewise minimal. A recent Sixth Circuit case summarized the requirements of substantive due process in the academic setting:

> Substantive due process, a much more ephemeral concept, protects specific fundamental rights of individual freedom and liberty from

> deprivation at the hands of arbitrary and capricious government action. The fundamental rights protected by substantive due process arise from the constitution itself and have been defined as those rights which are 'implicit in the concept of ordered liberty.' *Palk v. Connecticut,* 302 U.S. 319, 325 (1937), overruled on other grounds, *Benton v. Maryland,* 395 U.S. 784, 794 (1969). While this is admittedly a somewhat vague definition, it is generally held that an interest in liberty or property must be impaired before the protections of substantive due process becomes available. See e.g., *Regents of The University of Michigan v. Ewing,* 106 S. Ct. 507, 512 (1985); *Jeffries v. Turkey Run Consolidated School District,* 492 F. 2d 1, 4-5 (7th Cir. 1974). *Even if such an interest has been impaired by governmental action, courts will review the challenged decision only for arbitrariness or capriciousness. Indeed, in the academic setting, as the Supreme Court made clear in Ewing, courts may override the decision under substantive due process only if that decision is 'such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.' Ewing,* 106 S. Ct. at 513.
>
> *Gutzwiller v. Fenik,* 860 F. 2d 1317, 1328 (6th Cir. 1988) (emphasis supplied).

In order to establish arbitrary and capricious action, Petitioner must prove there was no rational basis for the University's decision or that the decision was motivated by bad faith or ill will unrelated to academic performance. *Stevens v. Hunt,* 646 F. 2d 1168, 1170 (6th Cir. 1981); *Hines v. Rinker,* 667 F. 2d 699, 703 (8th Cir. 1981);

Gaspar v. Bruton, 513 F. 2d 843, 851 (10th Cir. 1975); Accord *Regents of the University of Michigan v. Ewing*, *supra*, 474 U.S. at 225.

The foregoing authorities demonstrate the reluctance with which courts review academic decisions. Procedural due process is minimal and decisions are reviewed substantively, if at all, under an "arbitrary and capricious" standard.

In the present case, it is evident that the decisions rendered by the University and the School of Medicine have been academic decisions within the traditional province of the University. Moreover, it is clear that Tran has been provided procedural and substantive due process. At each step of the process, Tran has had the right to appeal, to make his case before each committee, or to abide by the conditions established for his readmission. He has met with the dean of the medical school and had his appeal reviewed by the provost of Wayne State University. The record in this case is one in which the medical school and the University have adhered closely to their published guidelines for assisting persons with behavioral problems, and the decisions rendered have been based on purely academic considerations, well within accepted academic norms. There is certainly no evidence to suggest otherwise.

IV. AS A MATTER OF LAW, RESPONDENTS ARE ENTITLED TO A DISMISSAL OF PETITIONER'S COMPLAINTS.

For a variety of other reasons, the dismissal of the Petitioner's complaints should be affirmed.

A. Wayne State University is entitled to Eleventh Amendment immunity.

The Eleventh Amendment to the United States Constitution states:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens of subjects of any foreign state.

The jurisdictional bar of the Eleventh Amendment protects not only the states themselves, but various agencies and instrumentalities found to constitute an arm or alter ego of the state. *Kashani v. Purdue University*, 813 F.2d 843 (7th Cir. 1987) (observing that the vast majority of cases considering the issue have found state universities to be protected by the Eleventh Amendment). Absent an express and specific waiver by a state of its immunity, the states remain immune from suit in federal court. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). Although sovereign immunity otherwise applicable to the states and their instrumentalities may be legislatively abrogated, any such abrogation of immunity must be explicit, unambiguous, and show clear congressional intention to subject the states to suit in federal court. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 87 L. Ed. 2d 171, 105 S. Ct. 3142 (1985).

To the extent that Petitioner's complaints attempt to state a claim under 42 U.S.C. § 1983, there is no legislative abrogation of Wayne State University's immunity. *Quern*

v. Jordan, 440 U.S. 332, 59 L. Ed. 2d 358, 99 S. Ct. 1139 (1979).

B. The facts simply do not demonstrate the existence of any cause of action against J.H. Isaacson.

Although Petitioner, in rather sensational terms, excoriates Isaacson for supposed misdeeds, it is evident from the documentary record that Isaacson has done nothing to render himself liable to Petitioner on any theory. Isaacson's exposure to Petitioner as a faculty member resulted in an evaluation in which Isaacson graded Tran as satisfactory in that clerkship, so the grade assigned had no influence on Tran's dismissal from the medical school. To the extent that Isaacson raised questions regarding Tran's suitability to practice medicine, these questions were subsequently addressed by Dr. Niccolini's evaluation, the report of the behavioral evaluation committee, and the subsequent deliberations of the promotions committee, the dean, and the provost. Tran was not dismissed because of Dr. Isaacson's evaluation, but was dismissed because the School of Medicine determined that he was unsuited for the practice of medicine.

C. Plaintiff's second complaint is barred by the doctrine of *res judicata*.

Although Isaacson is the only common defendant between Plaintiff's two lawsuits, Plaintiff has made the same allegations in both cases, arising out of the same transactions and occurrences, varying only the individual defendants named. Despite this slight variance in his

pleadings, Plaintiff cannot overcome the effect of *res judicata*. See *Randles v. Gregart*, 965 F. 2d 90, 93 (6th Cir. 1992), and cases cited therein.

Conclusion and Relief Requested

For the foregoing reasons, Respondents pray that this Honorable Court will deny the petition for writ of certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED
AUG 18 1997
CLERK

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No. 97-64

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MANH TRAN,

Petitioner,

v.

WAYNE STATE UNIVERSITY AND ITS EMPLOYEES,
HARPER HOSPITAL AND ITS EMPLOYEES,
J.H. ISAACSON,
RESPONDENTS' EMPLOYERS AND FUNDING
ORGANIZATIONS AND DEGREE-GRANTING
INSTITUTIONS
In their official and individual
capacities,

Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

Manh Tran, Pro se
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Detroit, MI 48201-1328
(313) 832-2046

August 16, 1997

17PP

QUESTIONS PRESENTED

1. The medical field is owned by the people of the United States and not by the respondents. Since there are breaches of contracts and fiduciary duties with the people, whether the people has the right to know about the massive fraud, deceit, errors in granting degrees by the respondents and the HIV-invasive procedures dodging by the graduates and the conducts of the respondents by publishing the truth to all the newspapers, Congress and the Governors and all the private funding organizations so the whole nation can boycott the respondents, the graduates all across the country.

2. Whether the whole nation should know

the tactics and then boycott the graduates and the respondents since the respondents use the Eleventh Amendment and that prevents monetary damages from being collected from the respondents.

3. There is a pattern of lies and deceit, from running for election to granting degrees, to Tustegee-type experiments as described in the newspaper and use of academic freedom as a bunker to protect from everything that is prosecutable. Whether the discretion card was accepted and approved by either Congress or the American people and allowed the respondents behave as described in the newspaper or that the US government can prosecute the respondents for fraud, embezzlement, treason, breaches of fiduciary duties and other mentioned violations of the laws.

4. It is unacceptable to let the respondents continue the medical killing fields when the casualties and damages described in the newspaper times an infinite number of times equal the actual damages suffered by the innocent American people. Gas masks were needed to read the respondents' record. Whether the Federal death penalty can overide Michigan's ban on death penalty, Michigan Constitution Article 4 Section 46.

5. When receiving funding with bloody and filthy hands, the respondents did not use the discretion card and the wisdom that the respondents claim to have. Whether those lies are prosecutable under the Federal perjury statutes as stated in the statutes sections.

6. Massive number of dead bodies that

could have been prevented and saved had petitioner were allowed to practice medicine with his talented skills, and whether the respondents are liable for it to the unknown number of families that were affected by respondents' actions.

7. Whether the respondents are prosecutable under the Federal Treason statute when the Board of Governors have 2 or 3 or 4 jobs and brag how good they are when Dr. Rauch had two jobs and the respondents called that breach of contract and fraud. In addition, respondents would not go to Wayne State quality doctors as described in the newspaper articles while imposing those massive trashes on the innocent American people

8. Whether petitioner can collect part of

the medical fraud, thefts as described in the petition under the Whistle blower Act of 1989, 5 USCA Section 1201 et seq or Michigan state law Act 469 of 1980 Sect. 17.428(1) et seq for fraud from the US and state governments.

9. Petitioner had to endure the longest siege in medical warfare with the largest concentration of HIV patients in public hospitals, with relentless attacks by the respondents while the other students are dodging, cheating in private hospitals. Whether the differences are ground for rescission of massive number of degrees.

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I. NEWSPAPER ARTICLE ABOUT RESPONDENTS.

Detroit Medical Center (the umbrella group over Hutzel and other hospitals) and several corporations run by a physician connected to Hutzel.

Robert Duty of Dykema Gossett, which is defending Detroit Medical Center, Hutzel Hospital and Dr. David Cotton, said he couldn't comment on the suit without his clients' approval.

"We deny the allegations and any liability," he said.

The suit brought by the three women has generated an 8-inch-thick court file that includes letters of complaint from patients, memos about sexual harassment of employees, memos between doctors and administrators, and information from personnel files purporting to document the allegations.

Cotton is not accused of patient abuse but of condoning the hostile

work environment as former chairman of the Wayne State's Medical School's Department of Obstetrics and Gynecology and also former chief of OB/GYN at Hutzel.

Cotton said in an interview that he "always acted on complaints" in his capacity as chairman. He denied the allegations against him.

After the suit was filed, lawyers for the plaintiffs submitted additional information to the court implicating at least eight doctors in the alleged abuse.

Those doctors are not named as defendants, and some said Thursday they were unaware of suit.

Among the allegations:
One doctor, who has since left Hutzel Hospital, entertained the staff with lewd details of his female patients' sexual histories and performed pelvic

exams without a gloved hand. He could not be reached for comment.

Cotton sent a letter to this doctor on May 20, 1994, discussing the other doctor's problems with obscene terminology; complaints by clerks, receptionist and nurses; and the doctor's questioning of the sexual practices of patients and of his nurse.

In November 1994, the doctor under fire was ordered to apologize to the staff, view a sexual harassment program and modify his behavior, according to a letter in the file. A month later, Cotton wrote to Frank Iocabell, head of Hutzel Hospital, urging that the doctor's behavior be modified or "all of us are going to become involved in a major lawsuit."

In a Jan. 4, 1995, letter, the doctor

who was criticized by Cotton wrote that he was now using gloves on both hands and he defended his discussion of patients' sex lives by saying that many of them had sexual dysfunction and that questioning was "necessary to give medical direction with regard to sexual relations."

In 1995, the doctor was sued for malpractice by a Detroit woman who alleged that while she was pregnant, he negligently treated her with an experimental drug that deformed her fetus and forced her to have a premature, emergency Caesarean section. Her baby was born permanently disabled and deformed. The suit was settled for $362,500.

Another doctor, a member of Wayne State's faculty, allegedly told female

staff members they should be put into concentration camps, described African-American female staff members as lazy and asked a female patient if she could satisfy her desires with a 12-year-old male virgin.

The patient later wrote a letter saying she would seek medical attention elsewhere from professionals who "possess not only knowledge but concern and respect for patients." She said the doctor had also called her an "Italian Mafia princess."

The doctor is also accused of telling the staff on one occasion not to page him "while I am in the bar," where he said he engaged in sexual activity.

The doctor, reached Wednesday, said he was not aware of the lawsuit. "I don't know the allegations so there is noth-

ing I can talk to you about," he said.

Another doctor is accused of assaulting a nurse with a contaminated instrument, breaking the skin. The nurse had to be tested for HIV infection as a result of the assault, according to documents in the case file.

Cotton is accused of referring to all midwives as a bunch of lesbians. He denies the charge.

The suit also alleges that Cotton thought it was a joke that one doctor performed "a lot of" clirectomies - a genital procedure common in some Third World regions but widely denounced in developed countries. Cotton denies joking about it.

Another high-ranking physician alledly acted in a callous manner toward some patients and staffers.

That doctor declined comment on the allegations, and the plaintiffs provided no written documentation to substantiate the claims.

Another doctor allegedly brought in a fetus from a late-term abortion with its feet missing to make it more difficult to determine if the fetus was older than 24 weeks.

The court record reveals that Cotton wrote a letter to the head of Hutzel, asking to cancel this doctor's privileges after he performed an abortion on a fetus that had a greater than 20-week gestation period. The woman's bladder and vagina were torn, and the doctor took all the fetal parts from the surgical room to pathology, according to the letter.

"At this time, no feet can be found for the fetus and therefore the dating of the fetus cannot be accomplished. Some of the people involved in the case suspect that this case was greater than 24 weeks gestation."

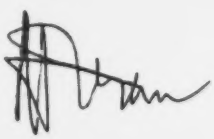
After an internal investigation into several issues involving this doctor, including painful examinations that caused his patients to bleed, Cotton recommended rescinding that doctor's privileges. "The staff is uncomfortable with the way he personally takes videos in the labor room of the perineum of patients," Cotton wrote to the head of Hutzel in December 1994.

This doctor said Thursday that he was not aware of the allegations and called them "ridiculous."

CONCLUSION

Due to the massive casualties and damages inflicted on the innocent American people emotionally and medically, the carpet bombing of the nation by the responsible respondents, the massive violations of the laws by the respondents, petitioner requests the Supreme Court grant Certiorari so the whole nation, the honest and decent American people can be the judges themselves and demand the maximum penalty so well deserved imposed on the respondents for justice.

Respectfully submitted,



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